

**Proposed amendments to the
Regulation of the European Parliament and of the Council laying down measures
concerning the European single market for electronic communications and to
achieve a Connected Continent**

Recitals

Recital 38

Text proposed by the Commission

In the interests of regulatory predictability, key elements of evolving decisional practice under the current legal framework which affect the conditions under which wholesale access products, including European virtual broadband access products, are made available for NGA networks, should also be reflected in the legislation. These should include provisions reflecting the importance, for the analysis of wholesale access markets and in particular of whether there is a need for price controls on such access to NGA networks, of the relationship between competitive constraints from alternative fixed and wireless infrastructures, effective guarantees of non-discriminatory access, and the existing level of competition in terms of price, choice and quality at retail level. The latter consideration ultimately determines the benefits to end users. **For example, in the conduct of their case-by-case assessment pursuant to Article 16 of Directive 2002/21/EC and without prejudice to the assessment of significant market power and the application of EU competition rules, national regulatory authorities may consider that in the presence of two fixed NGA networks, market conditions are competitive enough to be able to drive network upgrades and to evolve towards the provision of ultra-fast services, which is one important parameter of retail competition.**

Amendment

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Justification

Removal of the reference in Recital 38 that the mere existence of 2 NGA infrastructures could be indicative of sufficient retail competition and could justify the removal of wholesale access remedies from SMP operators.

Article 2 - Definitions

Article 2(9)

Text proposed by the Commission

"small-area wireless access point" means a low power wireless network access equipment of small size operating within a small range, which may or may not be part of a public terrestrial mobile communications network, and be equipped with one or more low visual impact antennas, which allows wireless access by the public to electronic communications networks regardless of the underlying network topology;

Amendment

"small-area wireless access point" means a low power wireless network access equipment of small size operating within a small range, **using exclusively licensed spectrum or a combination of exclusively licensed and license-exempt spectrum,** which may or may not be part of a public terrestrial mobile communications network, and be equipped with one or more low visual impact antennas, which allows wireless access by the public to electronic communications networks regardless of the underlying network topology;

Justification

Article 10(3)

Text proposed by the Commission

National competent authorities shall ensure that the fees for rights of use for radio spectrum, if any:

- (a) appropriately reflect the social and economic value of the radio spectrum, including beneficial externalities;
- (b) avoid under-utilisation and foster investment in the capacity, coverage and quality of networks and services;
- (c) avoid discrimination and ensure equality of opportunity between operators, including between existing and potential operators;
- (d) achieve an optimal distribution between immediate and, if any,

Amendment

National competent authorities shall ensure that the fees for rights of use for radio spectrum, if any:

- (a) appropriately reflect the social and economic value of the radio spectrum, including beneficial externalities, **and do not exceed market value;**
- (b) avoid under-utilisation and foster investment in the capacity, coverage and quality of networks and services;
- (c) avoid discrimination and ensure equality of opportunity between operators, including between existing and potential operators;
- (d) achieve an optimal distribution between immediate and, if any, periodic payments

periodic payments, having regard in particular to the need to incentivise rapid network roll-out and radio spectrum utilisation in accordance with Article 9(4)(b) and (e).

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(e) are due to be paid when operators are effectively able to exploit the spectrum

For spectrum that is put on the market through an auction procedure, where the fees are determined by the bids of the operators, the technical and regulatory conditions required to use that spectrum, need to be established prior to the start of the auction process; in some cases, prior technical testing could be necessary.

This paragraph shall be without prejudice to the application of paragraph 5 as regards any conditions resulting in differentiated fees between operators which are laid down with a view to promoting effective competition.

Justification

The proposed amendment aims to clarify that the fees referenced in this Article are intended to resolve excess demand. These are different in nature and must be treated differently from periodic fees that are meant just to recover administrative costs.

The final paragraph is deleted to avoid the implication that discriminating in terms of spectrum fees is justified in some cases.

Article 12.2.b

Text proposed by the Commission

(b) determine **a minimum duration for the rights granted in the harmonised bands;**

Amendment

(b) determine **that the rights in new harmonised bands, or in the renewal of existing harmonised bands, should be granted for an indefinite duration;**

Justification

Moving towards a regime with indefinite licences, subject to certain conditions, would increase predictability and certainty in the industry, supporting investment and the efficient use of spectrum.

Article 14

Text proposed by the Commission

Amendment

An undertaking, public authority or other end user shall not be deemed to be a provider of electronic communications to the public solely by virtue of the provision of public access to radio local area networks, where such provision is not commercial in character, or is merely ancillary to another commercial activity or public service which is not dependent on the conveyance of signals on such networks.

Deleted

Justification

It is not clear why it is beneficial to create this distinction between service providers. It could easily distort competition in the market for electronic communications and may have a negative impact on investment by conventional electronic communications providers.

Article 15

Text proposed by the Commission

Amendment

1. National competent authorities shall allow the deployment, connection and operation of unobtrusive small-area wireless access points **under the general authorisation regime** and shall not unduly restrict that deployment, connection or operation through individual town planning permits or in any other way, whenever such use is in compliance with implementing measures adopted pursuant to paragraph 2.

1. National competent authorities shall allow the deployment, connection and operation of unobtrusive small-area wireless access points and shall not unduly restrict that deployment, connection or operation through individual town planning permits or in any other way, whenever such use is in compliance with implementing measures adopted pursuant to paragraph 2.

This paragraph is without prejudice to the authorisation regime for the radio spectrum employed to operate small-area wireless access points.

2. For the purposes of the uniform **implementation of the general authorisation regime for the** deployment, connection and operation of small-area wireless access points pursuant to paragraph 1, the Commission may, by means of an implementing act, specify technical characteristics for the design, deployment and operation of small-area wireless access points, compliance with which shall ensure their unobtrusive character when in use in different local contexts. The Commission shall specify those technical characteristics by reference to the maximum size, power and electromagnetic characteristics, as well as the visual impact, of the deployed small-area wireless access points. Those technical characteristics for use of small area wireless access points shall at a minimum comply with the requirements of Directive 2013/35/EU³⁰ and **with** the thresholds defined in Council Recommendation No 1999/519/EC.³¹

The characteristics specified in order for the deployment, connection and operation of small-area wireless access point to benefit from paragraph 1 shall be without prejudice to the essential requirements of Directive 1999/5/EC of the European Parliament and the Council relative to the **placing on the market of**

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The **technical** characteristics specified in order for the deployment, connection and operation of small-area wireless access point to benefit from paragraph 1 shall be without prejudice to the essential requirements of Directive 1999/5/EC of the European Parliament and the Council relative to the **radio equipment and**

such products.³²

telecommunications terminal equipment and the mutual recognition of conformity.³²

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 33(2).

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Justification

In order to ensure full control over their networks and quality of service, it is of outmost importance for mobile network operators that any unauthorised usage of their dedicated spectrum can be promptly stopped. Therefore, it must be ensured that small-area wireless access points, operating in licensed spectrum used for mobile services, would only be operated by authorised persons or authorised undertakings in order to avoid interference with the mobile networks.

Article 17 – European virtual broadband access product

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 32 in order to adapt Annex I in light of market and technological developments, so as to continue to meet the substantive requirements listed in paragraph 1.

2. BEREC shall, after consulting stakeholders and in cooperation with the Commission, lay down guidelines for the relevant service standards associated with the Offers set out in Annex 1.

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Justification

*BEREC should be asked to detail the service standards associated with relevant European virtual access products. **SEE DETAILED AMENDMENT TO ANNEX 1***

ANNEX 1 – MINIMUM PARAMETERS FOR OFFERS OF EUROPEAN VIRTUAL BROADBAND ACCESS PRODUCTS

1. OFFER 1 - Fixed network wholesale access product offered over next generation networks at Layer 2 of the International Standards Organisation seven layer model for communications protocols ('Data Link Layer'), that offers equivalent functionalities to physical unbundling, with handover points at a level that is closer to the customer premises than the national or regional level.

1.1 Network elements and related information:

- (a) a description of the network access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of network access);
- (b) the locations at which network access will be provided;
- (c) any relevant technical standards for network access, including any usage restrictions and other security issues;
- (d) technical specifications for the interface at handover points and network termination points (customer premises);
- (e) specifications of equipment to be used on the network; and
- (f) details of interoperability tests.

1.2 Network functionalities:

- (a) flexible allocation of VLANs based on common technical specification;
- (b) service-agnostic connectivity, enabling control of download and upload traffic speeds;
- (c) security enabling;
- (d) flexible choice of customer premises equipment (as long as technically possible);
- (e) remote access to the customer premise equipment; and
- (f) multicast functionality, where there is demand and such functionality is necessary to ensure technical replicability of competing retail offers.

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1.3 Operational and business process:

- (a) eligibility requirement processes for ordering and provisioning;
- (b) billing information;
- (c) procedures for migration, moves and ceases; and
- (d) specific time scales for repair and maintenance.

1.4 Ancillary services and IT Systems:

- (a) information and conditions concerning the provision of co-location and backhaul;
- (b) specifications for access to and use of ancillary IT systems for operational support systems, information systems and databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing, including their usage restrictions and procedures to access those services.

3. OFFER 3: Wholesale terminating segments of leased lines with enhanced interface for the exclusive use of the access seeker providing permanent symmetric capacity without restriction as regards usage and with service level grade agreements, by means of a point-to-point connection and with Layer 2 of the International Standards Organisation (ISO) seven layer model for communications protocols ('Data Link Layer') network interfaces.

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1.5 Service Standards

(a) Provisioning time

- **5 days**

(b) Penalties for failure to comply with provisioning time

- **1 month rental for each day late**
- **Scheduled and co-ordinated provisioning available**

(c) Repair time

- **24 hours from fault report**
- **5 hours 24/7 express service**

(d) Penalties for failure to comply with provisioning time

- **1 month rental charge for each day late**

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- (a) a description of the network access to be provided, including technical characteristics (which shall include information on network configuration where necessary to make effective use of network access);
- (b) the locations at which network access will be provided;
- (c) the different speeds and maximum length offered;
- (d) any relevant technical standards for network access (including any usage restrictions and other security issues);
- (e) details of interoperability tests;
- (f) specifications of equipment allowed on the network;
- (g) network-to-network (NNI) interface available;
- (h) maximum frame size allowed, in bytes.

3.2 Network and product functionalities:

- (a) uncontended and symmetrical dedicated access;
- (b) service-agnostic connectivity, enabling control of traffic speed and symmetry;
- (c) protocol transparency, flexible allocation of VLANs based on common technical specification;
- (d) Quality of Service parameters (delay, jitter, packet loss) enabling business-critical performance.

3.3 Operational and business process:

- (a) eligibility requirement processes for ordering and provisioning;
- (b) procedures for migration, moves and ceases;
- (c) specific time scales for repair and maintenance;
- (d) changes to IT systems (to the extent that it impacts alternative operators); and
- (e) relevant charges, terms of payment and billing procedures.

3.4 Service level agreements

- (a) the amount of compensation payable by one party to another for failure to perform contractual commitments, including provisioning and repair time, as well as the conditions for eligibility to compensations;
- (b) a definition and limitation of liability and indemnity;

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- (a) the amount of compensation payable by one party to another for failure to perform contractual commitments, including provisioning and repair time, as well as the conditions for eligibility to compensations;
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- (c) procedures in the event of alterations being proposed to- the service offerings, for example, launch of new services, changes to existing services or change to prices;
- (d) details of any relevant intellectual property rights;
- (e) details of duration and renegotiation of agreements.

3.5 Ancillary IT systems:

specifications for access to and use of ancillary IT systems for operational support systems, information systems and databases for pre-ordering, provisioning, ordering, maintenance and repair requests and billing, including their usage restrictions and procedures to access those services.

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3.6 Service Standards

(a) Provisioning time

- **Order confirmation next working day**
- **Provisioning 5 working days maximum where infrastructure exists**
- **Otherwise (where build needed)**
 - **40 working days (95% lines)**
 - **60 working days (100% lines)**

(b) Penalties for failure to comply with provisioning time

- **1 month rental for each day late**
- **Scheduled and co-ordinated provisioning available**

(c) Repair time

- **5 hours**

(d) Penalties for failure to comply with repair time

- **15% of monthly rental charge + 15% monthly charge for each full hour in excess of 5 hours**

Justification

Elaboration on fit for purpose service standards for virtual unbundled local access and wholesale terminating segments of leased lines should accompany the identified minimum parameters – with BEREK issuing further detailed guidelines as per the amendment to Article 17.